

WALPOLE PLANNING BOARD MINUTES OF MARCH 21, 2013

A regular meeting of the Walpole Planning Board was held on Thursday, March 21, 2013 at 7:00 p.m. in the Town Hall Main Meeting Room. The following members were present: Edward Forsberg, Chairman; Richard Nottebart, Vice Chairman; John Murtagh, Clerk; John Conroy, Richard Mazzocca, and Margaret Walker, Town Engineer.

Mr. Forsberg opened the meeting at 7:04 p.m.

14 Renmar Avenue re: request for modification: The applicant was represented by Atty. Michael Cabral of Gelerman & Cabral, 30 Walpole Street, Norwood, MA. He stated that the Zoning Board voted to allow outside storage, so they are here tonight looking to 1) amend the fence line from the original site plans to enclose only a portion of the property instead of the entire boundary line; 2) amend the landscape plan; and, 3) add outdoor storage at the north side of the property. Mr. Cabral asked that the board consider those three items be a minor modification to an existing site plan. Also present was the applicant's engineer, Chris Kirby, who submitted a revised plan. He stated the original fence was gated and ran all around the property, but now it doesn't. The fire department will have direct access to the building. The dumpster was moved, but it is still screened and the number of parking spaces will remain the same. The applicant originally offered to run the fence all the way around the site. Mr. Forsberg questioned using the area by the high tensions as that wasn't part of our original decision. Mr. Kirby stated that the Zoning Board restricted that area, but then lifted the restriction. Mr. Conroy questioned why there would be a gate with no fence and Rich Saccone, the applicant, stated it is a power line gate.

Mr. Forsberg stated we need to determine whether this is a minor or major modification. He stated he doesn't have an issue with the plantings or the fence, but does have a problem with outside storage. Mr. Cabral stated they are requesting this be considered a minor modification because outside storage is allowed as a matter of right in the LM district. Mr. Forsberg stated he feels the abutters need to be noticed. Mr. Cabral stated they were noticed of the special permit with regard to the outside storage. Mr. Mazzocca asked if anyone was at the hearing and Mr. Cabral stated no. Mr. Murtagh asked what they are proposing to store and Mr. Cabral stated contracting equipment. Mr. Murtagh asked if it would be seasonal heavy machinery and Mr. Cabral stated yes. Mr. Murtagh asked if it will be out of the public's view and Mr. Cabral stated yes as it will be screened. Mr. Mazzocca stated he has no problem with this as it is an industrial area and it is screened in. He feels this is not a big deal. Mr. Cabral stated that other people on the street have outside storage so they don't have a problem with this. Mr. Conroy stated there was a hearing on the outside storage and it was approved and the neighbors were there. He agrees with Mr. Mazzocca that this is not a big deal. He will ask the building inspector to go down to the site and make sure that what was approved has been done. The people have had an opportunity to have their say.

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There were no comments from the public. Mr. Forsberg moved to determine that what was presented tonight be considered a minor modification. Motion seconded by Mr. Murtagh and voted 5-0-0. Mr. Cabral asked to be put onto the board's April 4th agenda. Mr. Forsberg put 14 Renmar Avenue on our April 4th agenda at 7:30 p.m. Mr. Cabral stated he will submit plans prior to that date and time.

7:25 p.m. High Oaks IV Subdivision, Millbrook Avenue: The applicant was represented by John Anderson, Anderson & Associates, Walpole, MA. He stated that Mr. Walsh is ready to give the town a \$200,000 check for the removal of Special Condition #3 from the board's decision as it relates to Lot 115. Mr. Forsberg asked if they are looking to remove Special Condition #3 and Mr. Anderson stated yes. They are trying to get everything squared away. The plan isn't changing. Mr. Conroy stated that this goes back a while and Mr. Boynton was going to negotiate this. Mr. Conroy stated town counsel should tell us how to proceed as this is still an active subdivision. He has never done anything like this. We are releasing Mr. Walsh from a ball field plus giving him a lot. Mr. Forsberg asked if it is a buildable lot and Mr. Anderson stated yes. Mr. Forsberg asked if we are only talking about Lot 115 and Mr. Anderson stated yes. Mr. Murtagh asked if we can vote tonight to remove the restriction on Lot 115 and Mr. Mazzocca stated we need town counsel because there are abutters that will be affected. This will change the nature of the abutters' property they have already bought. Mr. Conroy asked if Mr. Anderson is asking the board to lift the restriction. If we do that it will still be with the town. Mr. Anderson stated if we give you \$200,000, you aren't going to keep the lot. Mr. Conroy stated you can't change the number of lots in an approved subdivision. Mr. Anderson stated they are only talking about the use of the lot. Mr. Forsberg thought that Lot 115 was going to be turned over to the town as a gift. Mr. Conroy stated the town was going to take over Lot 115 when it became a ball field. Mr. Anderson stated the immediate abutters would like a house on this lot, not a ball field because of traffic, cars, etc.

Mr. Nottebart moved to ask town counsel to clarify the issues raised by the board based on the receipt of \$200,000 from Jack Walsh to the town to release Lot 115 by removing Special Condition #3 and whether or not the process should include notifying the abutters. Motion seconded by Mr. Murtagh and voted 5-0-0.

7:45 p.m. Article 32, Medical Marijuana Temporary Moratorium: Mr. Nottebart moved to waive the reading of the public hearing notice. Motion seconded by Mr. Murtagh. Motion voted 5-0-0.

Mr. Conroy stated this article is seeking a moratorium to June 30, 2014. They also want to put this in our zoning book so nothing can be built until after June 30, 2014. Mr. Forsberg stated it was suppose to be in effect in January of 2013. Mr. Forsberg read comments from the Deputy Fire Chief, Board of Health and Town Engineer. Robin Chappell, Health Agent, was present to speak to this article.

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She stated that the Department of Public Health doesn't have regulations in place for this at the moment, but will be coming out with them a week from Friday. It is not the town's intent to block this, but they want to review the regulations and then come up with comparable regulations that will be right for our community. The Board of Health and Drugs & Alcohol Coalition are in favor of the moratorium. Mr. Mazzocca asked if she knows if any of the other towns are doing this. She has met with other towns and most of them are waiting to see the DPH regulations. Ms. Chappell stated that the attorney general agreed that June 30, 2014 was fair.

Mr. Conroy asked if this will be licensed through the Board of Health or Board of Selectmen. Ms. Chappell stated probably the Board of Selectmen, similar to alcohol. However, some of the dispensaries will have food related products, which will come under the Board of Health. She stated that in the first year, there will be 35 dispensaries allowed with at least one in every county. Mr. Conroy asked if the Board of Health or the Selectmen can say no right now and Ms. Chappell stated she doesn't think so unless the moratorium is in place. Mr. Conroy stated it will be controlled by a vote of five people or seven people. He doesn't think this belongs in the Zoning Bylaw. It also would need a 2/3 vote from town meeting, which is not easy to get. He feels there should be a back up plan in place. He stated a 2/3 vote would also be needed to remove it from our Zoning Bylaw. He feels it would be easier to keep it within ourselves, but he doesn't care which way it goes. Ms. Chappell stated the Board of Health wasn't sure if anything had to be done before June 30, 2013. Mr. Conroy stated if this doesn't go through at town meeting, a dispensary could go anywhere on July 1st. It would be easier to vote with five people rather than 150.

Mr. Forsberg questioned there would be 35 dispensaries in the State, but no more than five per county and Ms. Chappell stated yes, for the first year. Mr. Forsberg asked if there are any limits after that and Ms. Chappell stated no. Mr. Forsberg asked if they could all go in one town and Ms. Chappell stated yes. It is marijuana is a big business and it is being scoped out now as to what is best for the town. Mr. Nottebart agrees with Mr. Conroy. He thought it was more of a pharmaceutical thing. Ms. Chappell stated it is a non-regulated drug, so it can't go into a pharmacy. Mr. Murtagh stated he is disappointed with the people in Massachusetts and the way they voted. Wakefield prohibited it and the Attorney General overturned that. This is like a freight train coming into town. He feels Mr. Conroy is correct. He asked if we have to go by the guidelines of the Department of Public Health and Ms. Chappell stated yes and we are waiting to see their regulations. This is happening fast. Mr. Murtagh stated that Foxboro voted against the moratorium. He feels this will only escalate to criminal and dangerous behavior. There is nothing in zoning that allows it now and he is totally against the moratorium. Ms. Chappell stated that is why they are asking for a moratorium giving the towns relief until June 30, 2014. Mr. Nottebart stated he had asked the board's secretary to ask Jack Mee how his office would handle this and Mr. Mee stated he would need to get legal counsel. He agrees with Mr. Murtagh.

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Ms. Chappell stated the moratorium would allow them to prepare regulations. If someone comes in with an application, we don't have to act on it because the moratorium would be in place.

Mr. Conroy stated when you put this in front of town meeting, it could go a hundred different ways. Mr. Murtagh stated there is nothing in our zoning book presently that allows this. Mr. Forsberg asked what they would apply under and Ms. Chappell stated that there are so many questions at this point and the town needs time to figure it all out. She stated we also need to figure out the cost of licensing. Mr. Conroy stated he is only warning her about town meeting. Mr. Nottebart asked what happens after June 30, 2014. Will it just go away? Ms. Chappell stated yes. Mr. Conroy stated on July 1st, it can go any where. Mr. Forsberg stated you would need something be next spring. Mr. Conroy stated if the Attorney General thinks there is a flaw, then we have nothing. Mr. Murtagh asked if we can ban growing and cultivating and Ms. Chappell stated we need to see what the State regulations show. As soon as the DPH comes out with regulations, we can work on ours. We also need to check with town counsel to make sure what we propose is correct. If an owner has a felony in drugs, it could be denied. On April 10, John Carmichael will be talking the marijuana moratorium and has invited all the RTM and she invited to board to attend.

Mr. Forsberg read correspondence from Deputy Fire Chief Laracy, Margaret Walker, Board of Health, and Conservation Commission. There were no public comments.

Mr. Forsberg moved for Favorable Action to support Article 32. Motion seconded by Mr. Mazzocca and voted 2-2-1 (Mazzocca, Forsberg in favor; Murtagh, Nottebart against; Conroy abstained.)

8:20 p.m. Northridge Farm Bond: Michael Viano was present and stated that town counsel did review the bond at his own expense and she came back with another bond form she would like him to use. They asked if the board could release the covenant pending the fully executed bond as per the motion submitted by town counsel. It is unfortunate there is a delay. Mr. Conroy stated that the process had been started and now Mark Good, the town's finance director is gone, but town counsel has outlined the procedure. He is not in favor of doing it this way, but will go along with it because town counsel has outlined it.

Mr. Nottebart moved that the Planning Board vote, as to the Northridge Farm Subdivision Project, to approve the attached Subdivision Surety Bond Agreement (Ex. A) and to release the attached Subdivision Surety Covenant (Ex. B) and execute the attached Release of Subdivision Covenant (Ex. C), but that the Release of Subdivision Covenant (Ex. C) shall be held in escrow by the Planning Board and not released to the Subdivision Applicant for recording unless and until all of the following conditions have been satisfied:

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- (1) the Subdivision Applicant provides the Planning Board and the Town's Treasurer with a fully executed Subdivision Surety Bond Agreement (Ex. A);
- (2) the Subdivision Applicant provides the Planning Board and the Town Treasurer with a proper surety bond instrument from the surety company, to support the Subdivision Surety Bond Agreement (Ex. A);
- (3) Town Counsel has reviewed the surety bond instrument and opined that the instrument is in full conformance with the conditions and requirements of the Subdivision Surety Bond Agreement (Ex. A) and is otherwise proper as to form and has been executed by an authorized person; and
- (4) the Town Treasurer has reviewed the subdivision surety bond instrument and provided confirmation to the Planning Board that the surety bond company and its bond instrument are financially sufficient, based upon the Treasurer's financial expertise.

Motion seconded by Mr. Mazzocca.

Mr. Conroy stated we release the covenant and accept the bond all subject to final review by town counsel. We are releasing it within our vote, but not to the applicant at this time.

Motion voted 5-0-0.

8:35 p.m. Tall Pines Subdivision: Mr. Forsberg stated the applicant is represented by Atty. Philip Macchi II. Ms. Walker stated this all started with review of the subdivision documents by town counsel. Ms. Walker gave them to the applicant's counsel who had comments and then they were sent back to town counsel who thought the ancient way was being relocated, but that issue went away after an explanation was given. Ms. Walker questioned town counsel if tonight's hearing can go forward or does it need to be continued until the new ad publishes and town counsel recommends that the list be obtained and that the new notice be mailed and advertised announcing the next public hearing session date, provided that there is time to do so. If there is not, then town counsel recommends that at the next public hearing session there be a continuance to allow enough time for the notice and advertising to take place and then resume the hearing in progress. Atty. Macchi has an issue with that. Mr. Forsberg stated that town counsel feels we should properly notice the abutters where work will be done. Atty. Macchi disagrees with town counsel. They have never gone down this road. This is the same as the Walsh Bros. Construction on Fisher Street, High Oaks, Comstock, Niden Woods, Hollowdale Farm, Granite Estates. They did notice abutters within 300' although they were only required to notice direct abutters. This has never been questioned before and they have just gone through the process to renote the abutters before this hearing. When does this end? Where does it stop? Will the board be asking for title assurance on every forthcoming subdivision? The title examination went back to the 1800's to find out where the road went. He is asking that this hearing go forward. Mr. Conroy stated he is talking about things not under the board's purview; i.e, drainage, off site improvements, etc. They need the slope easements to build the road and that is under our purview. You can't construct the road without slope easements. Our plans are encompassing with Sewer and Water and the Conservation Commission.

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Mr. Merrikin stated this board does do drainage as it is in our zoning book. Mr. Conroy stated you could do it on site if you choose and you could figure out a way to build the road without slope easements. Mr. Merrikin agreed.

Bob Fox, applicant, stated are you saying you have never approved a subdivision with a slope easement on an abutter's lot? Mr. Conroy stated no because typically it is down the middle of the subdivision and you would own both sides. The law is the law. You are using the abutters land to build the road. Mr. Merrikin stated we had a subdivision with a paper street. The abutter owns half and they own half, but that could be changed because this is an ancient way, not a paper street. If they thought it would be a problem, they would have moved it off the property line. He believes he has the right to build on this street just like the neighbors do. Mr. Conroy stated the issue is that town counsel's opinion is based on the slope easements. Mr. Forsberg stated the issue comes down to you need the easement, it doesn't matter how much area or slope. It doesn't matter if it is a big or small slope change.

Mr. Macchi stated if you look at the easements, it could be 10' or 6". The property granting the easement is not owned by the applicant. The law is you notice land in the subdivision. It is a homeowner saying they would rather have a slope than a wall. Mr. Nottebart stated that trying to read this is confusing. Some of Ilana Quirk's comments are about unsigned documents. Before the board votes, we need signed documents. This started on September 6, 2012 and he doesn't think the applicant was ready at that time to go forward. Mr. Macchi stated he was not in the process at that time. Mr. Nottebart stated they need to withdraw or we need to vote. Mr. Conroy stated we were suppose to open the hearing on September 6, 2012 but didn't because the applicant did not notice the abutters. Mr. Macchi stated he got involved in the first meeting in November. Mr. Conroy stated he is not sure that town counsel knew this subdivision had already been started. What happened between town counsel and Mr. Macchi is stuff that should have been discussed at our meeting. Ilana Quirk is our counsel and we will not go against her. The applicant should start over and refile again properly.

Mr. Murtagh stated this is like a bouncing ball. There are so many plans and so many changes. 6" is not much of a slope easement. These problems call for a new hearing. Mr. Mazzocca stated we may have already noticed the correct abutters because we noticed abutters within 300'. Mr. Conroy stated there was information going back and forth outside of the public hearing. We are the process and that was going on behind us. He wants something that everyone likes and is not appealable. The simplest way is to withdraw without prejudice and get with town counsel before you come back. Mr. Merrikin asked about the fees. Mr. Conroy stated this has been going on since September. Mr. Merrikin stated that Big Y is not an abutter that requires the slope work. It is only the direct abutters to the three lots on High Plain Terrace.

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Mr. Conroy he is questioning the slope easements and the stuff that has gone on behind the scene. Mr. Forsberg agrees with Mr. Conroy. He asked if we have ever noticed anyone outside a subdivision and Mr. Conroy no because in the past stated those were utility easements.

Mr. Mazzocca stated we have an opinion from town counsel and he doesn't see how we as a board can ignore it, which ends this conversation as far as he is concerned.

Mr. Macchi stated they will get a direct abutters list from the Assessors. If they have been noticed, there is no reason to send another notice. They only need to do direct abutters. If they didn't, he completely respects the board's opinion and will then do so. If they have, there is no reason to do it again. Mr. Forsberg stated those three properties on High Plain Terrace are not part of this subdivision. Mr. Nottebart stated that he feels the public hearing process is important to the people who live in that area. He still doesn't understand the issues surrounding the ancient way. He has read this stuff for hours and talked with Maggie. He feels like they weren't ready in September to move forward. Mr. Merrikin stated that when they filed the subdivision application, a question came up when Ms. Walker reviewed it and asked what to do with the ancient way. Mr. Fox stated there was a misunderstanding with town counsel as she thought they were moving the ancient way, but they have never changed that. Mr. Nottebart asked if this was in the Fall and Mr. Fox stated yes. Ms. Walker disagreed. Mr. Merrikin stated the question never came up until a few weeks ago. Mr. Nottebart stated the public hearing process suffers if we don't have all the information. Mr. Merrikin stated if the neighbors had concerns, they would be here. Mr. Fox stated the neighbors were noticed twice. Mr. Forsberg stated we can't go against our town counsel. Mr. Fox stated he will do it over, but is not sure how to reapply or resubmit. Mr. Merrikin stated plans should be done. Mr. Forsberg stated they need to check on the abutters list as they said they had gone beyond what was required. Mr. Forsberg suggested they withdraw without prejudice and start clean. Mr. Merrikin stated okay, but he would refile the exact same information. The board doesn't have to make a decision for 135 days once he files it. Technically, he can't press for an approval until then. Mr. Nottebart stated he feels Mr. Merrikin is making this our fault. I would question how much I paid you if I were the applicant. When things are clean, we can move them pretty quickly. Mr. Forsberg stated he never heard of an ancient way before this. Mr. Macchi suggested if they withdraw without prejudice, would the board consider waiving the filing fee. Mr. Conroy asked if withdrawal hinges on the filing fee. Mr. Macchi stated that is a reasonable request that his client is asking. They have already agreed to do the renote. Mr. Macchi respectfully asked to withdraw this application without prejudice. Mr. Forsberg moved to allow the applicant to withdraw without prejudice as per request of his attorney. Motion seconded by Mr. Murtagh and voted 5-0-0.

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Mr. Macchi asked that the filing fee be waived when they refile the Tall Pines subdivision. Mr. Forsberg moved to waive the filing fee for the Tall Pines subdivision as per request of the applicant's attorney when the application is refiled. Motion seconded by Mr. Murtagh and voted 3-2-0 (Nottebart, Conroy).

Mr. Forsberg explained to the abutters that the applicant has withdrawn this application and will most likely be refiled a new one.

9:30 p.m. Lubold, 254 Plimpton Street, Case No. 13-1: Mr. Forsberg read the public hearing notice. The applicant was represented by Atty. Paul Schneiders, Canton. H stated that Mr. Lubold, also present, lives at 254 Plimpton Street.

Mr. Brodmerkle, Site Design Engineering, stated as a result of last night's meeting with the Zoning Board of Appeals, they had to generate two new parking spaces because the Zoning Board didn't want them out front. Atty. Schneiders stated the applicant has talked about putting landscaping where the parking spaces were out front.

Mr. Forsberg read comments from the Zoning Board, Police Department, Fire Department, Conservation Commission, Sewer & Water and Board of Health.

Ms. Walker questioned the proposed 6' vinyl fence. She stated if something is going to be done on other than the subject property, it has to be shown on the plan. She stated the latest plan doesn't show drainage for the new driveway. Mr. Brodmerkle stated he will provide stormwater management, but has just learned that the Zoning Board wanted the spaces out front moved. Mr. Schneiders stated that could be a condition of approval. He stated that another condition could be there must be a 6' high fence unless Mr. Marini landscapes the area to the satisfaction of the Planning Board. Regarding the fence, Mr. Conroy asked why it wasn't on the original plan and who requested it. Mr. Brodmerkle stated they have just enough space to comply with the Zoning Bylaw, but not enough space for a hedge. Mr. Conroy asked why they need shrubs and Mr. Brodmerkle stated it would look better. Mr. Conroy asked if they wanted it and Mr. Brodmerkle stated yes. Mr. Murtagh asked if the building conforms now because they moved two parking spaces and removed the porch and Mr. Schneiders stated yes. Mr. Nottebart feels the landscaping will greatly improve the area and Mr. Lubold agrees. Mr. Marini stated they will be doing extensive landscaping. Mr. Murtagh asked if everything is done and Mr. Marini stated yes. Mr. Conroy stated they needed to do this so they would have a clear title, and it should have been recommended by the previous design engineer. Mr. Lubold feels that everything is now very much improved.

There were no comments from the public. Ms. Walker stated they need to come back with construction details with regard to the drainage.

Mr. Forsberg moved to close the public hearing. Motion seconded by Mr. Nottebart and voted 5-0-0.

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Mr. Conroy moved to approve the site plan at 254 Plimpton Street with the board's standard conditions and one special condition that states the town engineer will work with the applicant to subsequently improve the drainage layout including the landscaping. Motion seconded by Mr. Nottebart and voted 5-0-0.

Time Cards: Mr. Forsberg moved to approve the board secretary's time cards. Motion seconded by Mr. Mazzocca and voted 5-0-0.

Mr. Forsberg reminded the board that they were asked to attend the March 25th meeting of the Finance Committee at 7:30 p.m. to discuss the \$15,000 in the budget for a consultant.

It was moved, seconded and voted to adjourn. The meeting adjourned at 10:00 p.m.

Respectfully submitted,

John Murtagh, Clerk

Accepted 4/4/13